

## COMMENT LETTER

## RESPONSES

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other in doing so. Happiness and contentment was achieved then, as it should be now.

The connecting of the Habi makes them one person for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the pyramids in the middle portion where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.



The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible - plants don't grow - there will be no life - nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured brighter and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai - PEOPLE OF THE TALL PINES.

**HUALAPAI NATION  
OFFICE OF THE CHAIRWOMAN**

Louise Benson  
Chairwoman

P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216

Carrie Ingus  
Vice Chairwoman

September 8, 2000

**VIA FACSIMILE No. (702) 293-8042**

**Regional Director  
Lower Colorado Region  
c/o Jayne Harkins  
BC00-4600  
Bureau of Reclamation  
PO Box 61470  
Boulder City, NV 89006-1470**

**Re: Colorado River Interim Surplus Criteria Draft Environmental Impact Statement ("DEIS")**

**Dear Ms. Harkins:**

On behalf of the Hualapai Tribe, I submit for the record the enclosed comments on the Colorado River Interim Surplus Criteria DEIS. As explained in the comments, the Hualapai Tribe has serious concerns about the impacts of the proposed criteria on the Tribe's ability to utilize its Colorado River water rights, on its economic development, and on its cultural resources.

Because the impacts of the proposed criteria on the Hualapai Tribe would be significant and because the Bureau of Reclamation ("Reclamation") and the Department of Interior ("DOI") have a trust duty that requires consultation with the Hualapai Tribe and protection of our water rights and other resources, we urge Reclamation and DOI to:

1. Immediately commence quantification of our Colorado River water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria;
2. Revise the DEIS to include analysis of the impacts on the Hualapai Tribe's water rights;

## COMMENT LETTER

## RESPONSES

Regional Director  
September 8, 2000  
Page 2

3. Revise the DEIS to include analysis of the socioeconomic impacts on the Hualapai Tribe;
4. Comply with the National Historic Preservation Act § 106 process for taking into account the proposed action's impacts on cultural resources of concern to the Hualapai Tribe;
5. Protect the integrity of and access to Hualapai sacred sites on federal lands;
6. Mitigate significant Hualapai socioeconomic, environmental justice and cultural resource impacts;
7. Rewrite the DEIS in plain language;
8. Recirculate the DEIS for public comment after making the revisions requested above; and
9. Complete all of the foregoing through government-to-government consultation with the Hualapai Tribe.

Please share these comments with Deputy Secretary David Hayes, Debbie Saint, and other appropriate persons at BOR and DOI to ensure that we are promptly contacted to schedule an initial consultation meeting in September 2000.

Sincerely,



Louise Benson  
Chairperson

cc (w/encl.): Deputy Secretary of Interior David Hayes  
Debbie Saint, Bureau of Reclamation  
Felicia Marcus, Regional Administrator, U.S. EPA Region 9  
Clay Bravo, Director, Hualapai Department of Natural Resources  
Annette Morgan, Program Manager, Hualapai Department of Natural

Resources

Monza Honga, Director, Hualapai Department of Cultural Resources  
Cameron Daines, President, Grand Canyon Resort Corporation  
Susan G. Jordan, Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP

## COMMENT LETTER

## RESPONSES

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other. In doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hualapai makes them one people, for happiness or contentment cannot be achieved without each other.

The Caavsons are represented by the purple in the middle ground, where the people were created. These caavsons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, that it will.



The Reservation is our heritage and the settings of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible - plants don't grow - there will be no life - nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the avian and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai - PEOPLE OF THE PINE TREES.

HUALAPAI NATION  
OFFICE OF THE CHAIRWOMAN

Louise Benson  
Chairwoman

P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216

Carrie Imus  
Vice Chairwoman

**COMMENTS OF THE HUALAPAI TRIBE ON THE COLORADO RIVER INTERIM  
SURPLUS CRITERIA DRAFT ENVIRONMENTAL IMPACT STATEMENT ("DEIS")**

September 8, 2000

**Introduction**

The Hualapai Tribe has serious concerns about the impacts of the proposed interim surplus criteria on the Tribe's ability to utilize its water rights, on its economic development, and on its natural and cultural resources. The DEIS ignores these impacts, in violation of the trust duty, the requirement under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et seq.*, to consider the significant impacts of the proposed action, the cultural resources protection requirements of the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470, *et seq.*, and the requirements of various Executive Orders concerning Native American Tribes and environmental justice populations.

In proposing the interim surplus criteria, the Department of the Interior ("DOI")<sup>1</sup> has not only failed to consider these impacts but also has failed to meet its trust duty to protect the Hualapai Tribe's trust resources. As the DOI is well aware, the Hualapai Tribe has unadjudicated aboriginal and federal reserved water rights in the Colorado River. These water rights are Indian Trust Assets entitled to protection by the DOI. The Hualapai Tribe has repeatedly requested consultation with the DOI on the quantification and protection of our water rights, to no avail.

In the past year, we have joined the Navajo Nation and the Havasupai Tribe in requesting a joint meeting with the DOI regarding water right issues of mutual concern to the

<sup>1</sup> As stated in the DEIS, the Secretary of the Interior is "acting through the U.S. Bureau of Reclamation (Reclamation)" in proposing the interim surplus criteria. DEIS at 1-1. The National Park Service ("NPS"), which like Reclamation is within the DOI, is a cooperating agency for the DEIS. *Id.* at 1-4. All references to DOI in these comments include the DOI, Reclamation and NPS.

tribes, including the proposed interim surplus criteria. Once again, we ask the DOI to honor its trust duty to protect our water rights by promptly quantifying our water rights in consultation with us. We understand that DOI intends to adopt interim surplus criteria by the end of this year, despite our objection to adoption of criteria prior to quantification of our water rights. Therefore, we demand that DOI immediately commence quantification of our water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria. We also urge the DOI to take various other steps to address the violations of the trust duty, NEPA, NHPA and the Executive Orders discussed in these comments. These requests are summarized in the final section of these comments.

#### Table of Contents

Overview of the Hualapai Tribe and the Hualapai Reservation .....	3
The Hualapai Tribe Has Aboriginal and Federal Reserved Water Rights in the Colorado River .....	3
The DOI has a Trust Duty to the Hualapai Tribe to Protect the Tribe's Water Rights, and must Explicitly Address the Proposed Action's Impacts on the Tribe's Water Rights and Fully Mitigate or Avoid Those Impacts .....	4
The Proposed Interim Surplus Criteria Would Have Significant Adverse Impacts on the Hualapai Tribe's Colorado River Water Rights .....	7
The DOI Violates NEPA and the Trust Duty by Ignoring the Proposed Action's Impacts on the Hualapai Tribe's Water Rights .....	7
The DOI Violates NEPA and the Trust Duty by Failing to Analyze the Proposed Action's Socioeconomic Impacts on the Hualapai Tribe .....	8
The DOI Violates NEPA, the Trust Duty, the NHPA, and Executive Order 13007 by Failing to Evaluate Cultural Resource Impacts, Protect Cultural Resources, and Consult with the Hualapai Tribe and Tribal Historic Preservation Officer .....	10
The DOI is in Violation of Its Trust Duty by Failing to Consult with the Hualapai Tribe Regarding the Proposed Action, its Impacts and Appropriate Mitigation .....	12
The DOI has Failed to Make the DEIS a "Clear and Concise Statement" that is "Understandable" to the Public, in Violation of NEPA and Executive Order 12898	13
Conclusion and Request for Compliance, Consultation, and Quantification of the Hualapai Tribe's Colorado River Water Rights .....	14

## COMMENT LETTER

## RESPONSES

**Overview of the Hualapai Tribe and the Hualapai Reservation.**

The Hualapai Tribe is a federally recognized Indian Tribe. **The Hualapai once inhabited seven million acres in and around the Grand Canyon and the Colorado River.** The Hualapai Indian Reservation was established in 1883 on a portion of the Tribe's ancestral lands. The main land base of the Reservation, located in northwestern Arizona, encompasses approximately one million acres of land and extends for 108 Colorado River miles, from about River Mile 165 to about River Mile 273.

**The Colorado River is central to Hualapai history, culture, sustenance and survival. The Hualapai traditionally cultivated along the Colorado River banks, in the side canyons and on the plateau. Hualapais also crossed the Colorado River at strategic locations in order to trade and visit with their relatives, the Pai Pais.** Traditional ceremonial sites on the Colorado River have continued in use to the present day. **The Hualapai have engaged in ranching over vast areas of the Reservation since the early part of the 20<sup>th</sup> Century. The Hualapai, who are known as "the People of the Tall Pines," traditionally harvested timber. Timber harvesting is a significant component of the Reservation economic base today.**

The Hualapai Tribe's current economic development efforts focus on tourism. **The Tribe has designated about 9,000 acres in the northwest corner of the Reservation with unsurpassed views of the Grand Canyon and the Colorado River for tourism development. This area, known as Grand Canyon West, receives nearly 100,000 daytime visitors annually. In addition, Hualapai River Runners guides dozens of tourists on white water and float trips every day of the rafting season. These business ventures provide an important source of Tribal government revenues and Reservation employment.**

The Hualapai Tribe has an enrolled membership of about 2,200 persons. Approximately 1,800 persons reside on the Hualapai Reservation, including about 1,000 enrolled tribal members. Poverty and unemployment are epidemic on the Reservation. Over 56% of Indian residents were below the poverty level in the 1990 Census, and over 80% were below the U.S. Department of Housing and Urban Development's Very Low Income Standard in 1991. The Reservation unemployment rate is quite high: 56% according to 1995 BIA Labor Force data and up to 70% seasonally according to the Hualapai Tribe's most recent data.

**The Hualapai Tribe Has Aboriginal and Federal Reserved Water Rights in the Colorado River.**

**There can be no question that the Hualapai Tribe has aboriginal water rights in the Colorado River. These rights arise from the Tribe's habitation and cultivation of the lands, and associated water uses, in and around the Grand Canyon since time immemorial. In addition to these aboriginal rights, the Hualapai Tribe possesses federal reserved water rights in accordance with the establishment of the Hualapai Reservation.**

## COMMENT LETTER

## RESPONSES

The Hualapai Tribe's water rights have not been quantified because the United States has failed to pursue quantification, notwithstanding the repeated requests of the Tribe and the federal government's trust duty to protect those rights. In the Arizona v. California adjudication, the United States purported to represent the Tribe yet failed to pursue quantification of the Tribe's water rights. Tribal water rights above Lake Mead – including the rights of the Hualapai Tribe, the Navajo Nation and the Havasupai Tribe – were not quantified in Arizona v. California. See 376 U.S. 340, 353 (1964). While the decree in that case did not quantify these tribal rights, it also did not affect any Indian aboriginal or federal reserved water rights above Lake Mead. See id.

The fact that the Hualapai Tribe's federal reserved water rights are not quantified and are not presently fully used by the Tribe does not change their status as federal reserved water rights. Indian federal reserved water rights need not have identified, immediate uses to justify a duty of protection by the United States government. See Winters v. United States, 207 U.S. 564 (1908). Pursuant to the “Winters Doctrine,” Indian federal reserved water rights are property rights which are intended to meet the present and future needs of Indian tribes and which vest no later than the establishment of the reservation, regardless of whether those rights have been adjudicated or otherwise formally permitted. See Arizona v. California, 373 U.S. 546, 598-600 (1963). In addition, Indian federal reserved water rights do not depend upon beneficial use for their initial or continued existence. See, e.g., Cappaert v. United States, 426 U.S. 128, 143-145 (1976).

The DOI has a Trust Duty to the Hualapai Tribe to Protect the Tribe's Indian Trust Assets, and must Explicitly Address the Proposed Action's Impacts on the Tribe's Trust Assets and Fully Mitigate or Avoid Those Impacts.

The federal government in its dealings with Indian Tribes is charged with “moral obligations of the highest responsibility and trust” and should be “judged by the most exacting fiduciary standard.” Seminole Nation v. United States, 316 U.S. 286, 296 (1942). The DOI has adopted policies and procedures to ensure that its actions comply with the trust responsibility. DOI policy requires DOI to protect trust resources and conduct government-to-government consultation with tribes:

It is the policy of the Department of Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety.

512 DM 2.2 (Dec. 1995). See also Secretarial Order 3215, April 28, 2000.

Reclamation's own Indian Trust Asset Policy states that the “trust responsibility requires that all Federal agencies, including Reclamation, take all actions reasonably necessary to protect trust assets.” See Bureau of Reclamation, Indian Trust Asset Policy (Aug. 31, 1994)

*in Protection of Indian Trust Resources (compilation on file with the DOI) ("Reclamation Indian Trust Asset Policy").<sup>2</sup>*

The Indian Trust Assets ("ITAs") entitled to protection under the trust responsibility include water rights. 512 DM 2.2 (Dec. 1995). Thus, DOI has a trust responsibility to take all actions reasonably necessary to protect the Hualapai Tribe's water rights.

To help avoid or mitigate ITA impacts, DOI has adopted procedures requiring ITA impacts to be analyzed during the NEPA process for proposed actions. DOI procedures require that "[a]ny effect [on Indian trust resources] must be explicitly addressed in the planning/decision documents, including, but not limited to . . . Environmental Impact Statements. . . ." 512 DM 2.4(A) (emphasis added). Such documents "shall . . . [e]xplain how the decision will be consistent with the DOI's trust responsibility." *Id.*

Reclamation's procedures similarly require the assessment of impacts on ITAs from "[a]ctions that could impact the value, use or enjoyment of the ITA." Bureau of Reclamation, Indian Trust Asset Policy and NEPA Implementing Procedures: Questions and Answers About the Policy and Procedures (hereinafter "ITA Q&A"), Section IV-4 at 9 (Aug. 31, 1994) in *Protection of Indian Trust Resources*. "Such actions could include interference with the exercise of a reserved water right." *Id.* "[A]ll impacts, both positive or negative, should be analyzed and discussed." *Id.* Unavoidable impacts should be fully mitigated:

The first strategy should be to avoid causing significant adverse impacts. When this is not possible, an attempt should be made to minimize such impacts. If adverse impacts do occur, the next step is to identify mitigation or compensation measures to offset adverse impacts so that there is no net loss to the Indian beneficial owners of the asset.

ITA Q&A, Section V-1 at 13.

While DOI has implemented its ITA policies through NEPA for administrative convenience, DOI's legal duties with respect to ITAs are not limited to NEPA's procedural requirements. NEPA requires, as a procedural matter, that an environmental impact statement "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. By contrast, the trust duty is a substantive obligation to protect trust resources, not merely an obligation to make an informed decision.

<sup>2</sup> In February 1996, Secretary of the Interior Babbitt and Assistant Secretary Deer transmitted to Interior employees a compilation of the policies and procedures adopted by the bureaus and offices of the DOI relating to trust protection practices. This compilation is referred to herein as "Protection of Indian Trust Resources."

## COMMENT LETTER

## RESPONSES

1

In addition to NEPA and trust duty, DOI must comply with various applicable Executive Orders and Presidential Memoranda, including: Executive Order 13084 of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" 63 Fed. Reg. 27655 (May 19, 1998); Memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments," 59 Fed. Reg. 22951 (May 4, 1994); and Executive Order 12898 of February 11, 1994, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629 (February 16, 1994).

Executive Order 13084 provides in pertinent part:

In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

E.O. 13084, § 2, 63 Fed. Reg. 27655.

President Clinton's Memorandum of April 29, 1994 requires federal agencies to ensure that they operate within a government-to-government relationship with federally recognized tribes, consult with tribal governments to the greatest extent permitted by law prior to taking actions that affect them, and:

assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

Memorandum of April 29, 1994, §§ (a), (b) and (c), 59 Fed. Reg. 22951.

Executive Order 12898 requires in pertinent part that:

[t]o the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs on minority populations and low-income populations.

E.O. 12898 § 1-101, 59 Fed. Reg. 7629.

1: Reclamation respectfully believes that appropriate consultation with Indian Tribal Governments occurred with respect to the development of interim surplus criteria. A full listing of the consultations during the development of the interim surplus criteria is found in Section 5.4.



## COMMENT LETTER

## RESPONSES

**The Proposed Interim Surplus Criteria Would Have Significant Adverse Impacts on the Hualapai Tribe's Colorado River Water Rights.**

The Supreme Court held in Arizona v. California that the water uses on each reservation within a Basin state must be accounted for out of the water allocated to that state. See 376 U.S. at 343. This means that the Hualapai Tribe's mainstream water rights are included in Arizona's 2.8 million acre-feet apportionment. Adoption of the surplus criteria will increase the Lower Basin States' reliance on the use of unquantified water rights, and thereby increase their incentive to oppose the quantification of unquantified Indian water rights in the Lower Basin. As a result, the Tribe's ability to access these waters for beneficial uses in the future will be jeopardized.

The DEIS acknowledges that the proposed action will diminish the ability of the tribes in the Ten Tribes Partnership to utilize their undeveloped Colorado River water rights in precisely this manner. The DEIS states:

The Ten Tribes have a significant amount of undeveloped water rights. The availability of surplus water on the Colorado River is primarily a direct result of unused existing entitlements, including those of the tribes. The interim surplus criteria could make other entitlement holders develop a reliance on surplus water, provide a disincentive for those entitlement holders to support future development, and have the practical effect of diminishing the tribes' ability to utilize their entitlements.

DEIS at 3.14-2.

The DEIS should acknowledge that the proposed action will also diminish the Hualapai Tribe's ability to utilize its entitlements for the same reasons. The inability to beneficially use its vast Colorado River water rights is unquestionably a significant impact on the Hualapai Tribe and its trust resources. Strangely, the DEIS is silent on the Hualapai Tribe's water rights, as discussed in the following section.

**The DOI Violates NEPA and the Trust Duty by Ignoring the Proposed Action's Impacts on the Hualapai Tribe's Water Rights.**

The DEIS fails to analyze – or even mention – the proposed action's impacts on the Hualapai Tribe's water rights. This omission is a violation of NEPA, the trust duty and Executive Order 12898.

In Section 3.14, "Indian Trust Assets," the DEIS purports to analyze the proposed action's impacts on ITAs. In this section, the DEIS discusses the water rights of each of the tribes in the Ten Tribes Partnership and the tribes served by the CAP. Id. at 3.14-1 to 3.14-22. Section 3.14 includes a detailed analysis of impacts on the CAP tribes' water rights. Id. at 3.14-

1a: The interim surplus criteria will not alter the quantity of priority of Tribal entitlements. In fact, as noted by the description of the Tribes' water rights above, the Tribes have the highest priority water rights on the Colorado River. Surplus determinations have been made by the Secretary since 1996, and surplus water supplies have been utilized by valid Colorado River contractors under the Secretary's annual surplus determinations since that date. Adoption of ISC will not make any additional surplus water available as compared with current conditions, but rather will provide more objective criteria for surplus determinations and will quantify the amounts of surplus water to be made available on an annual basis. Reclamation does not believe that identifying the limited amounts of surplus water will provide any additional disincentives for Tribal water development. Interim surplus criteria are also intended to complement efforts by California to reduce its over reliance on surplus water. The selection of any of the alternatives of this proposed action does not preclude any entitlement holder from using its water rights.

## COMMENT LETTER

## RESPONSES

cont'd

16 to 3.14-22. Section 3.14 provides the brief description of how the proposed action could impact the Ten Tribes Partnership tribes' water rights (quoted above at page 7), but fails to include a comparable analysis of impacts on their water rights. *Id.* at 3.14-2. However, this section says nothing at all about the Hualapai Tribe's water rights.

We cannot fathom why DOI would ignore our water rights when it is well aware of them. The fact that the Hualapai Tribe's mainstream Colorado River water rights have not been adjudicated does not change their status as ITAs and does not excuse DOI from analyzing the impacts on those water rights. *See* page 4 above. Indeed, the DEIS at least discusses the Navajo Nation's unadjudicated mainstream Colorado River water rights, albeit without a meaningful analysis of the proposed action's impacts on those rights. DEIS at 3.14-5.

3

The DEIS also fails to disclose the proposed action's disproportionate impacts on the Hualapai Tribe in the "Environmental Justice" section of the document. The Hualapai Tribe clearly is a "minority" and "low-income" population within the meaning of Executive Order 12898 on Environmental Justice. The proposed action would have a disproportionate impact on the Hualapai Tribe (and similarly situated tribes, including the Navajo Nation and Havasupai Tribe) by treating their unquantified Colorado River water rights as "surplus" water and making that water available for the benefit of predominately non-minority water users.

Under the trust duty and policies and regulations discussed above, the DEIS must explicitly address the proposed action's impacts on the Hualapai Tribe's water rights and explain how the proposed action will be consistent with DOI's responsibility to protect these water rights. In addition, the DOI must ensure that the Hualapai Tribe's water rights are protected and the proposed action's impacts on those rights are avoided or sufficiently mitigated. We have repeatedly urged the DOI to quantify the Hualapai Tribe's water rights prior to or concurrent with actions -- including the establishment of surplus criteria -- that will significantly impact our ability to utilize our water rights.

4

Although we have asked DOI to quantify our water rights prior to or concurrent with adopting surplus criteria to ensure that our rights are protected, we understand that DOI nonetheless intends to issue the criteria by the end of this year. If DOI adheres to that schedule, then we demand that DOI immediately commence quantification of our water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria. To do otherwise would irreparably diminish the Tribe's ability to utilize its water rights and would exacerbate DOI's past failures to protect the Tribe's water rights.

**The DOI Violates NEPA and the Trust Duty by Failing to Analyze the Proposed Action's Socioeconomic Impacts on the Hualapai Tribe.**

3: Unquantified Colorado River water rights cannot be analyzed and as such does not constitute an environmental justice issue for this EIS.

4: See response to Comment 49-1.

## COMMENT LETTER

## RESPONSES

The DEIS also fails to analyze the proposed action's significant socioeconomic impacts on the Hualapai Tribe. These impacts stem from the diminishment of the Tribe's future ability to develop its water rights and from the anticipated unavailability of the Pearce Ferry boat take out due to the reduction in Lake Mead water levels. Because these impacts fall disproportionately on the Hualapai Tribe, they are environmental justice impacts as well as socioeconomic impacts.

The Hualapai Tribe's only hope for economic development, including tourism, rests in its ability to access sufficient water resources to sustain development. By increasing the Lower Basin States' dependence on unquantified mainstream Indian water rights and resistance to quantification of those rights, the proposed action will create formidable political and financial obstacles to the Tribe's access to sufficient water resources. Without a sustainable water supply for economic development, the Tribe cannot attain economic self-sufficiency. The DEIS completely ignores these significant impacts.

The proposed action will also severely compromise Tribal revenues and job creation from river running. The Hualapai River Runners is the river-running operation of Grand Canyon Resort Corporation ("GCRC"), a Tribal corporation wholly owned by the Hualapai Tribe. Hualapai River Runners conducts guided white water river trips commencing at Diamond Creek, and float trips commencing at Quartermaster Canyon. All boats on these trips take out at Pearce Ferry. A portion of the payment for each trip is for a trespass fee imposed by Hualapai Tribal ordinance. The Tribe is entitled to receive from GCRC the trespass fees and a portion of the total revenues from the Hualapai River Runners' operations. The Tribe also levies sales tax on each trip sold by the Hualapai River Runners. In the past, the funds that the Tribe receives from the Hualapai River Runners operations have comprised a significant portion of the Tribal general fund budget, and the Tribe anticipates that these funds will also be an important Tribal revenue source in the future. The general fund budget supports social programs on the Reservation, including youth education and substance abuse rehabilitation programs. The jobs provided by Hualapai Rivers Runners are one of the few employment opportunities on the Reservation and are an important factor in fighting Reservation unemployment and poverty.

The DEIS fails to evaluate these significant impacts. Instead, the DEIS merely states that "[t]his concession [the Diamond Creek to Pearce Ferry river trips] may be affected if trips encounter changes in availability of the Pearce Ferry take out." DEIS at 3.9-34. There is no doubt that Hualapai River Runners would be significantly adversely impacted by the proposed action. As acknowledged in the DEIS, "[a]t pool elevations of 1170 feet msl, the Pearce Ferry take out is inaccessible and boaters must paddle an additional 16 miles to South Cove to take out." *Id.* The DEIS predicts that all alternatives except the Flood Control Alternative would reduce pool elevations below 1170 feet msl and the Flood Control Alternative would result in an elevation of 1171 feet msl. *Id.* Table 2-1 at 2-17. In fact, Pearce Ferry take out is likely to be inaccessible at higher pool elevations: a recourse manager for Lake Mead National Recreation Area advised the Hualapai Tribe this week that Pearce Ferry will be inaccessible

5: Sections 3.9.2.2.3 and 3.9.2.3.2 of the FEIS have been expanded to include additional detail with regard to the importance of Pearce Ferry to the Hualapai, based on the Tribes comments on the DEIS. Note that although baseline conditions and the interim surplus criteria alternatives under consideration would result in increased probabilities for lower Lake Mead surface elevations over time, the primary influence on Lake Mead elevation reductions results from increases in Uper Basin depletions.

## COMMENT LETTER

## RESPONSES

cont'd

at 1183 msl because of sedimentation. Consequently, Hualapai River Runners trips would be forced to take out at South Cove under all alternatives. This impact is unacceptable.

Taking out at South Cove would cost the Hualapai River Runners in fuel, time, safety, and labor costs, and will likely cost the Hualapai River Runners in lost business. A South Cove takeout would delay the takeout time by one to two hours, exhausting the river guides and preventing the Hualapai River Runners from meeting the timetables for the package tours through which a substantial portion of these trips are sold. If the Hualapai River Runners cannot meet these schedules, their business partners may cease booking blocks of trips with the Hualapai River Runners. The Hualapai Tribe would be harmed by lost sales tax, trespass fee payments and percentage of revenue entitlements, and by increased unemployment on the Reservation.

The DOI Violates NEPA, the Trust Duty, the NHPA, and Executive Order 13007 by Failing to Evaluate Cultural Resource Impacts, Protect Cultural Resources, and Consult with the Hualapai Tribe and Tribal Historic Preservation Officer.

The DOI has completely overlooked its duties to avoid adverse effects to Hualapai traditional cultural properties ("TCPs") on Hualapai Tribal lands and to preserve and provide Hualapai access to Hualapai TCPs and sacred sites on federal lands. The DOI has also failed to undertake the required consultation with the Hualapai Tribe and Tribal Historic Preservation Officer ("THPO") regarding these TCPs and sacred sites.

6

Section 106 of the NHPA, 16 U.S.C. § 470f, requires federal agencies to take into account the effects of their "undertakings" (actions) on historic properties and to afford the Advisory Council on Historic Preservation an opportunity to comment. Congress amended the NHPA in 1992 to require consultation with Indian Tribes, to allow THPOs to assume the consultation and concurrence role afforded State Historic Preservation Officers ("SHPOs") for undertakings on tribal lands, and to clarify that properties of traditional religious and cultural importance to an Indian Tribe are eligible for inclusion on the National Register of Historic Places ("NRHP") (i.e., that they can be historic properties). See 16 U.S.C. §§ 470a(d)(2), 470a(d)(6)(A), and 470a(d)(6)(B). The Hualapai THPO assumed the role of the SHPO for Hualapai Tribal lands by agreement with the National Park Service in 1996.

The DEIS states that "Reclamation has determined development and implementation of interim surplus criteria meets the definition of an undertaking, but an undertaking that is without potential to effect historic properties." DEIS at 5-3. Hence, the DEIS concludes, "Reclamation has fulfilled its responsibilities to take into account the effects of the development and implementation of interim surplus criteria on historic properties." Id.

This conclusion is based on an erroneous assumption that "there is virtually no chance cultural resources retaining qualities that would qualify them for consideration as historic properties potentially eligible for inclusion on the NRHP exist within the [area of potential

6: Thank you for your comments and for bringing to our attention your concerns regarding Reclamation's on-going operation of the Upper and Lower Colorado River. Per a request from the Nevada State Historic Preservation Officer (SHPO), the matter of effects to historic properties that might result from development of Interim Surplus Criteria (ISC) has been forwarded to the Advisory Council on Historic Preservation (Council). Development and implementation of ISC falls within the range of on-going operations, and the reservoirs and the River will continue to be operated within historic operational parameters under both baseline conditions and action alternatives. Because of this, Reclamation believes many of the issues you raise with regard to historic properties are better addressed under Section 110, rather than Section 106 of the National Historic Preservation Act. Reclamation is aware of its responsibilities under Section 110 for managing historic properties on lands under its jurisdiction and will commit to consulting with the Hualapai and other tribes within that framework. In accordance with the direction provided by EO 13007, Reclamation is also committed to working with the Hualapai and other tribes with ties to the Lower Colorado River to accommodate access to and use of sacred sites, and to the extent practicable, not adversely affect the physical integrity of sacred sites which have been identified by the tribes as being located on lands under its jurisdiction. If the Hualapai or other tribes have information concerning sacred sites that are being impacted by on-going reservoir and river operations, Reclamation urges the tribes to bring these situations to the attention of the appropriate Reclamation office.

## COMMENT LETTER

## RESPONSES

effect] of the present undertaking” because these cultural resources “have been repeatedly inundated, exposed, and re-inundated” since Hoover Dam and Glen Canyon Dam were constructed. *Id.* at 3.13-5. In other words, DOI is assuming that water and weathering have rendered all otherwise eligible properties ineligible for the NRHP.

Such an assumption is not valid for “properties of traditional religious and cultural importance to an Indian Tribe” eligible for the NRHP under 16 U.S.C. §470a(d)(6)(A). The DEIS is apparently invoking the requirement under the criteria of NRHP eligibility that the property have “integrity of location, design, setting, materials, workmanship, feeling, and association.” See 36 C.F.R. § 60.4. However, as explained in National Register Bulletin 38, “Guidelines for Evaluating and Documenting Traditional Cultural Properties”:

A property may retain its traditional cultural significance even though it has been substantially modified. . . . [T]he integrity of a possible traditional cultural property must be considered with reference to the views of traditional practitioners; if its integrity has not been lost in their eyes, it probably has sufficient integrity to justify further evaluation.

National Park Service, National Register Bulletin 38, “Guidelines for Evaluating and Documenting Traditional Cultural Properties” at 10.

Moreover, a “structure” need not remain in order for a TCP to be a historic property eligible for the NRHP:

Construction by human beings is a necessary attribute of buildings and structures, but districts, sites and objects do not have to be the products of, or contain, the work of human beings in order to be classified as properties. . . . A natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use.

*Id.* at 9.

Clearly, DOI cannot assume without consultation with the Hualapai Tribe and THPO that the proposed undertaking “is without the potential to effect” Hualapai TCPs. By these comments, the Hualapai Tribe and THPO place the DOI on notice that they believe Hualapai TCPs and sacred sites both on and off Hualapai tribal lands may be adversely affected by the proposed undertaking. DOI must consult with the Hualapai Tribe and THPO in compliance with NHPA § 106 and the Advisory Council’s regulations at 36 C.F.R. Part 800. DOI also must fulfill its trust duty to the Hualapai Tribe to protect Hualapai TCPs located on Tribal lands as trust resources. To the extent consistent with the need to keep Hualapai TCP information confidential to protect the sites from vandalism and ensure that ceremonial use is not hindered, DOI also must disclose impacts on these sites in the DEIS.



## COMMENT LETTER

## RESPONSES

cont'd

In addition, the proposed action may adversely affect Hualapai TCPs or sacred sites on federal lands in violation of Section 110 of the NHPA and Executive Order 13007 of May 24, 1996, "Indian Sacred Sites." The proposed action also may hinder access to and ceremonial use of Hualapai sacred sites on Federal lands in violation of Executive Order 13007.

Section 110 of the NHPA requires, among other things, that federal agencies preserve historic properties owned or controlled by them and provide a process for identifying and evaluating historic properties in consultation with Indian tribes. See 16 U.S.C. § 470h-2(a). Executive Order 13007 requires that:

In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

E.O. 13007, § 1(a), 61 Fed. Reg. 26771 (May 29, 1996).

Executive Order 13007 further requires federal agencies with land management authority – including the DOI – to promptly implement procedures for carrying out the above requirement, including "procedures to ensure reasonable notice is provided of proposed actions . . . that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites." Id. § 2(a). Such procedures must comply with the Presidential Memorandum of April 29, 1994 on "Government-to-Government Relations with Native American Tribal Governments." Id.

The proposed surplus criteria may affect access to or ceremonial use of, or adversely affect, Hualapai TCPs on sacred sites on federal lands, including lands within Lake Mead National Recreation Area or Grand Canyon National Park. In order to identify TCPs and sacred sites and determine whether such effects would occur, DOI must consult with the Hualapai Tribe and THPO.

To date, DOI has failed to conduct the consultation and evaluation required by NHPA §§ 106 and 110 and Executive Order 13007. DOI has also failed to analyze the impacts of the proposed action on Hualapai TCPs and cultural sites in violation of NEPA. DOI must comply with these duties prior to adopting surplus criteria.

7

The DOI is in Violation of Its Trust Duty by Failing to Consult with the Hualapai Tribe Regarding the Proposed Action, its Impacts and Appropriate Mitigation.

In addition to the consultation duty under NHPA §§ 106 and 110, DOI has a trust duty to consult with the Hualapai Tribe regarding the proposed action, its impacts and appropriate

7: The operation of the Colorado River and the development of interim surplus criteria are complex and highly technical in nature. A considerable effort was made to balance the needs of all members of the public and write the DEIS in language that could be understood by both a technical and non-technical audience. The writers of the DEIS acknowledge the difficulty of accomplishing this task. For the FEIS, the writers of the document have made a further effort to use plain language whenever possible. Chapter 5 has been modified to more fully describe the process to consult with Tribes. Several meetings regarding interim surplus criteria were held in which the Hualapai Tribe was invited.

## COMMENT LETTER

## RESPONSES

mitigation, as discussed above on pages 4-6. DOI has failed to meet this duty to date, despite prompting by the Tribe.

The Hualapai Tribe has implored the DOI to work with the Tribe to quantify and protect its water rights numerous times over the years. In the past year, we have repeatedly requested consultation on several matters that are likely to have significant adverse impacts on the Hualapai Tribe's water rights. These matters include the proposed settlement in CAWCD v. United States, the reallocation of Central Arizona Project water supplies, and the proposed surplus criteria. For example, in April of this year we asked Deputy Secretary David Hayes to convene a consultation meeting with the Hualapai Tribe, the Havasupai Tribe and the Navajo Nation to discuss issues of mutual concern to these tribes. See letter from Louise Benson, Chairwoman, Hualapai Tribe, to David Hayes, Deputy Secretary of the Interior, April 7, 2000 (attached). In December 1999, we requested a meeting with Secretary Babbitt, Assistant Secretary Kevin Gover, and Solicitor John Leshy to discuss the Hualapai Tribe's Colorado River issues. This request was in response to the Secretary's public statement that the federal government should actively engage Indians in discussions regarding Colorado River water issues. See letter from Louise Benson, Chairperson, Hualapai Tribe, to Hon. Bruce Babbitt, Secretary of Interior, December 27, 1999 (attached). When we called the Secretary's office to arrange a meeting shortly after we sent this letter, we were informed that he did not have time to meet with us.

The DEIS may mislead decision makers to believe that DOI has consulted with the Hualapai Tribe on the Interim surplus criteria. The DEIS offers numerous broad assurances that the appropriate consultations with tribes have occurred. In Section 3.14, "Indian Trust Assets," the DEIS asserts that "Reclamation has entered into government-to-government consultations with potentially affected tribes to identify and address concerns for Indian trust assets." DEIS at 3.141. The DEIS further asserts that these "potentially affected tribes" include tribes in the Ten Tribes Partnership, tribes served by the Central Arizona Project ("CAP"), and unnamed "other interested tribes within the Lower Colorado Region." *Id.* Similarly, under the section headed "Environmental Justice," the DEIS asserts that "Reclamation has involved potentially affected tribes and the Bureau of Indian Affairs to identify and address tribal concerns. . . . This includes tribes with reservations along the Colorado River, as well as tribes with Colorado River water rights in the Basin States." *Id.* at 3.15-1 to 3.15-2. This section cites Section 3.14 and Chapter 5 of the DEIS. Chapter 5, entitled "Consultation and Coordination," simply asserts that "[s]ince May 1999, Reclamation has had numerous meetings with the various tribes who have an interest in the implementation of ISC." *Id.* at 5-4.

The Hualapai Tribe is plainly a "tribe with a reservation along the Colorado River," a "tribe with Colorado River water rights in the Basin States," and a "tribe with an interest in the implementation of the ISC." Yet DOI has not "involved" us in the process of developing the criteria and evaluating their impacts, much less formally consulted us as required by its legal obligations.

## COMMENT LETTER

## RESPONSES

DOI has Failed to Make the DEIS a "Clear and Concise Statement" that is "Understandable" to the Public, in Violation of NEPA and Executive Order 12898.

As stated in the NEPA regulations of the Council on Environmental Quality ("CEQ"), "NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." See 40 C.F.R. § 1500.1(b). To "make the NEPA process more useful to decisionmakers and the public," CEQ regulations specify that "Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses." See *id.* §§ 1500.2(b) and 1502.1. CEQ regulations further require that "[e]nvironmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them." See *id.* § 1502.8.

Similarly, Executive Order 12898 requires that "[e]ach Federal agency shall work to ensure that public documents . . . relating to human health or the environment are concise, understandable, and readily accessible to the public." Executive Order 12898, § 5-5(c), 59 Fed. Reg. 7629 (emphasis added). As explained in President Clinton's Memorandum on Environmental Justice accompanying Executive Order 12898, one of the purposes of that order is "to provide minority communities and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment." Memorandum on Environmental Justice, February 11, 1994, Pub. Papers of the President, 1994 Book I at 241.

The DEIS for the proposed interim surplus criteria fails to meet these standards for plain language, understandability, and low-income and minority community access. The hydrology modeling discussion, in particular, is so technical as to be incomprehensible to anyone lacking advanced education in hydrology. The graphs used to illustrate the text only make the concepts more difficult to understand. Yet understanding the hydrology modeling discussion is essential to understanding the environmental impacts of the proposed action because virtually all of the impact analysis is based on the hydrology model output. This defect in the DEIS has hindered the Hualapai Tribe's ability to understand, review and comment on the DEIS.

For example, the Tribe has concerns about the impacts of Lake Mead water elevations on the water quality, aquatic resources, cultural resources and shorelines and shoreline vegetation, as well as the potential for further inundation of the Tribe's lands. However, the Tribe cannot independently assess these impacts and develop comments on them because the hydrology modeling discussion is so incomprehensible.

Accordingly, the DEIS should be rewritten in plain language and recirculated for public comment.

8: The DEIS and FEIS are technical documents and as such, contain substantial technical information. Reclamation has made every effort possible to provide extensive, understandable explanations of the technical analysis in the DEIS and FEIS. Further, during the public comment period, Reclamation conducted technical meetings and public hearings to receive questions and provide explanation on the technical aspects of the studies conducted and information presented in the DEIS. The dates and times of these meetings were published in letters mailed to interested parties, local newspapers and in the Federal Register. Furthermore, Reclamation also accommodated various agencies and other entities by meeting with them, at their request, to provide explanation on the technical aspects of the studies conducted and information presented in the DEIS. As such, Reclamation is of the opinion that it has made every effort possible to meet or exceed the standards for plain language, understandability, and low-income and minority community access. Chapter 5 of the FEIS entitled "Consultation and Coordination" includes Reclamation's public involvement process and coordination. See also response to Comment 49-7.



**Conclusion and Request for Compliance, Consultation, and Quantification of the Hualapai Tribe's Colorado River Water Rights.**

For the reasons discussed above, DOI is in violation of its trust duty to the Hualapai Tribe, its NEPA obligation to disclose the proposed action's significant impacts on the Hualapai Tribe and its trust resources, its NHPA §§ 106 and 110 duties with regard to Hualapai TCPs, its obligations under Executive Orders 12898, 13007, and 13084, and its associated consultation and mitigation duties. To bring DOI into compliance with these duties, the Hualapai Tribe urges DOI to:

1. Immediately commence quantification of our Colorado River water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria;
2. Revise the DEIS to include analysis of the impacts on the Hualapai Tribe's water rights;
3. Revise the DEIS to include analysis of the socioeconomic impacts on the Hualapai Tribe;
4. Comply with the NHPA § 106 process for taking into account the proposed action's impacts on cultural resources of concern to the Hualapai Tribe;
5. Protect the integrity of and access to Hualapai sacred sites on federal lands;
6. Mitigate significant Hualapai socioeconomic, environmental justice and cultural resource impacts;
7. Rewrite the DEIS in plain language;
8. Recirculate the DEIS for public comment after making the revisions requested above; and
9. Complete all of the foregoing through government-to-government consultation with the Hualapai Tribe.

So that we may expeditiously begin the required consultation, we urge DOI to contact immediately Hualapai Chairperson Louise Benson, Director of Natural Resources Clay Bravo, and Tribal Historic Preservation Officer Monza Honga to schedule a meeting in September 2000 with Deputy Secretary Hayes and Ms. Debbie Saint of Reclamation's Lower Colorado Regional Office.

## COMMENT LETTER

## RESPONSES

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.



The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

The Hualapai Tribe is a sovereign nation with a rich and diverse culture. The tribe's history is a testament to the resilience and strength of its people. The tribe's land is a source of pride and a source of life. The tribe's people are a source of strength and a source of life.

HUALAPAI NATION  
OFFICE OF THE CHAIRMAN

Louise Benson  
Chairman

P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216

Aaron Mapatis  
Vice Chairman

The Honorable Bruce Babbitt  
United States Department of the Interior  
Office of the Secretary  
1849 C. St. N.W.  
Washington, D.C. 20240

December 27, 1999

Mr. Secretary:

At the Colorado River Water User's Association Meeting in Las Vegas, Nevada on December 17<sup>th</sup>, you addressed the audience stating there are two priorities in the next millennium: the Environment and Indians. You also stated that the Federal Government should actively engage Indians in discussions regarding Colorado River Water Issues.

In light of your speech, the Hualapai Tribe respectfully requests to have a meeting with yourself, Assistant Secretary, Mr. Kevin Gover, and Department of Interior Solicitor, Mr. John Leshy, to discuss the Colorado River issues of our Tribe.

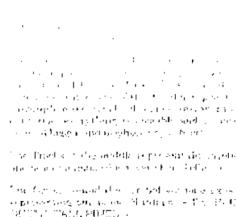
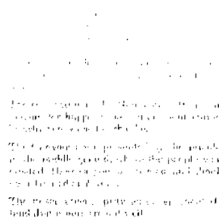
The Tribe remembers the promise you made in 1994, during the California Condor release at Vermillion Cliffs, to visit the Reservation. We will be contacting your office after the New Year to set a meeting date. If there are any questions, please contact myself or Clay Bravo, Director of Natural Resources at 520-769-2255.

Sincerely,  
HUALAPAI TRIBAL COUNCIL

*Louise Benson*

Louise Benson,  
Chairperson

This document is an attachment of the Hualapai Nation's September 8, 2000 comment letter. All relevant comments are addressed above in response to the September 8, 2000 letter.



Chairman

P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216

**Vice Chairman**

April 7, 2000

Mr. David Hayes  
Deputy Secretary of the Interior - MS 7229  
1849 C Street NW  
Washington, DC 20240

RE: Proposed Stipulated Settlement - *CAWCD v. U.S.*

Dear Mr. Hayes:

Although the Hualapai Tribe of Arizona has myriad concerns regarding its reserved rights claims to the waters of the Colorado River mainstream, these comments are submitted in the context of the proposed stipulation intended to accomplish the settlement of the above referenced case. It is our hope that you will consider an early meeting with the Hualapai Tribe, together with the Havasupai Tribe and Navajo Nation, to discuss issues of mutual concern to these tribes. To that end, the Hualapai Tribe assures you that it is in unity with the concerns expressed by the Navajo Nation in its letter to you dated April 4, 2000.

The Tribe, likewise, expresses the concerns set forth in the comments submitted by the Ten Tribes Partnership regarding the proposed stipulation. The briefing held in Phoenix on March 14, 2000, provided very little opportunity for those in attendance to adequately express their concerns, both because of short notice of the briefing and the limited time available to discuss the implications of the proposal upon the water rights of the mainstream Tribes, both adjudicated and unadjudicated.

The Colorado River is the northern boundary of the Hualapai Reservation (which encompasses the lower portion of the Grand Canyon) for a distance of approximately one hundred twenty miles. It is superfluous to say that this is an area of great natural beauty which has been inhabited by the Hualapai since time immemorial. Although some economic benefit is realized from a development known as Grand Canyon West and through fees paid by outfitters

This document is an attachment to the Hualapai Nation's September 8, 2000 comment letter. All relevant comments are addressed above in the response to the September 8, 2000 letter.

## COMMENT LETTER

## RESPONSES

and guides, with a sustainable water supply the potential for future development and use of this area to the benefit of the Tribe is enormous, if done in a culturally sensitive manner.

The Tribe has subsisted on this land for hundreds of years, using the meager water resources available on tributary systems due to the lack of financial resources and the will of the United States to quantify and assist in the development of the Tribe's mainstream water rights in one of the great rivers of North America, which fortuitously flows through the Reservation. In *Arizona v. California*, the United States filed a claim on behalf of the Tribe only to abandon it without explanation. Some forty years later, the Tribe's trustee has neglected to take any action to protect the Tribe's water. Now, because the proposed action of the Department jeopardizes the future ability of the Tribe to access these waters for beneficial uses, the Tribe will fall further behind in its drive toward economic self-sufficiency.

The Navajo Nation has made a very coherent case for the quantification and development of the mainstream rights of the three tribes omitted in the *Arizona v. California* adjudication prior to, or at the least in conjunction with, the CAWCD settlement. To avoid redundancy, the Tribe will not repeat that analysis. The failure to quantify and protect the tribe's rights in the mainstream adjudication was a clear breach of trust. We believe that the Department will compound this breach of trust responsibility by going forward with this settlement without first addressing Hualapai's mainstream rights. The Tribe's only hope for development, including tourism, rests in its ability to access sufficient water resources to sustain such development. The settlement of this action, as proposed, may well deprive the Tribe of this one opportunity at self-sufficiency.

On behalf of the Hualapai Tribe, I urge you to convene an early meeting with the three mainstream tribes whose rights are not protected by decree. Thank you for your consideration.

Very truly yours,

  
Louise Benson, Chairwoman